COMMONWEALTH OF PENNSYLVANIA

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September 17, 1999

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Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
445 12th Street, S. W.
Washington, DC 20554

In the Matter of: Calling Party Pays Service Offering in the Commercial Mobile Radio Services
WT Docket No. 97-207; FCC 99-137

Dear Ms. Salas:

Enclosed please find an original and four copies of Comments of the Pennsylvania Office of Consumer Advocate and Missouri Office of the Public Counsel in the above-referenced matter. Please also note that these Comments have been filed with the Commission electronically.

Please indicate your receipt of this filing on the additional copy provided and return it to the undersigned in the enclosed self-addressed, postage prepaid, envelope. Thank you.

Sincerely yours,

Philip McClelland

Joel H. Cheskis
Assistant Consumer Advocate

Enclosure

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

In the Matter of	:	WT Docket No. 97-207
	:	
Calling Party Pays Service Offering in the Commercial Mobile Radio Services	:	FCC 99-137

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I hereby certify that I have this day served a true copy of the foregoing document, Comments, upon parties of record in this proceeding.

Dated this 17th day of September, 1999.

Respectfully submitted,

Joel H. Cheskis
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Assistant Consumer Advocate

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COMMENTS OF THE
PENNSYLVANIA OFFICE OF CONSUMER ADVOCATE
AND MISSOURI OFFICE OF THE PUBLIC COUNSEL

I. INTRODUCTION

The Pennsylvania Office of Consumer Advocate and the Missouri Office of the Public Counsel ("Joint Consumer Advocates") hereby submits these Comments regarding the Declaratory Ruling and Notice of Proposed Rulemaking in the Matter of Calling Party Pays Service Offering in the Commercial Mobile Radio Services ("NPRM") as released by the Federal Communications Commission ("FCC" or "Commission") on July 7, 1999. The Joint Consumer Advocates are designated by Pennsylvania and Missouri state laws to represent public utility ratepayers before their State Commissions, federal agencies and state and federal courts. The Joint Consumer Advocates are actively involved in representing consumer interests concerning telecommunications issues in these venues and are therefore familiar with the issues contained in the NPRM.

The FCC has indicated two fundamental reasons for initiating the NPRM:

> First, the availability of CPP as a service offering for wireless telephone subscribers has the potential to expand wireless market penetration and minutes of use and, in so doing, offers an opportunity to provide a near-term competitive alternative to incumbent local exchange carriers (ILECs) for residential customers. Second, we believe that there may be obstacles to the widespread introduction of

CPP, and that market forces alone may not eliminate these obstacles.

NPRM at ¶ 20. The Joint Consumer Advocates submit these Comments to assert that the Calling Party Pays Service Offering ("CCP") should not be implemented because it is anti-competitive, it will add unwarranted additional charges to consumers' local residential telephone bills, and wireless telecommunications service continues to achieve substantial market penetration without the implementation of CCP. In support of its position that CPP should not be implemented, the Joint Consumer Advocates file these Comments.

II. SUMMARY

The Joint Consumer Advocates submit that the wireless telecommunications industry is expanding rapidly in the United States and is increasingly being used by consumers to serve their various telecommunication needs. However, the introduction of CPP would detract from the appropriate development of wireless telecommunications and would be harmful to consumers. CPP may also detract from advancing true price competition for wireless service and is therefore anti-competitive.

If CPP is implemented, this will create additional charges on consumers' local telephone bills to pay for calls to wireless users. The Joint Consumer Advocates submit that consumers should not be saddled with additional charges on their local telephone bill in order to call individuals who have wireless service. These additional charges will likely increase with CPP as more consumers purchase wireless service, those service provideres choose CPP, and more calls are made to wireless customers. Thus, the Joint Consumer Advocates submits that the benefits of CPP are outweighed by its detriments and should not be approved.

III. COMMENTS

A. The Benefits of Calling Party Pays Are Outweighed By The Detriments.

The Joint Consumer Advocates share the same concerns expressed by many commenters to the original Notice of Inquiry,[1] and reiterated in the NPRM at paragraphs 53 and 54, with regards to the issue of rates associated with the implementation of CPP. Some commenters, in response to the NOI, correctly expressed concern that the rates charged to callers for CPP calls could be significantly above competitive levels since these rates may not be subject to federal or state regulation. Id. at ¶ 53.

As stated in the NPRM, direct competitive pressure on rates will not exist in the case of CPP calls because the calling party does not select the service provider carrying the call and does not have the ability to switch to a different carrier to obtain a better rate for completing the call. Id. The Commission correctly points out in the NPRM that the calling party can only elect to complete the call at the price charged by the wireline carrier that serves the called party, or terminate the call prior to its completion to avoid any charges. Id. In the CPP context, there is only indirect competitive control on these rates, e.g., the wireless customer might ultimately switch to a different carrier with a better rate for incoming calls if excessive rates charged by its wireless carrier result in the wireless customer not receiving incoming calls. Id. The Joint Consumer Advocates submits that this is not a sufficient safeguard for calling parties against excessive rates when calling wireless customers.

The Commission also correctly notes in the NPRM other problems associated with CPP such as excessive charges for calls to mobile phones that has been a problem in countries that have

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[1] "Calling Party Pays Service Option in the Commercial Mobile Radio Services," WT Docket No. 97-207, Notice of Inquiry, 12 FCC Rcd 17963, 17701 (1997) ("NOI").

already implemented CPP. Id. at ¶ 54. The problem again is that the calling party, who is not a wireless customer, lacks any control over the rates it is charged by the wireless service providers.[2] Id. Additional problems with CPP include situations, such as emergencies, where the calling party will have no choice but to complete a CPP call to a mobile subscriber notwithstanding the notification of the CPP rate and the opportunity to terminate the CPP call before completion. Id. Certainly, consumers should not be required to pay rates chosen by someone else in such circumstances. In these situations, the NPRM continues, any CPP notification system may not serve to protect a calling party from excessive rates. In any event, CPP will erode the competitive benefits obtained when the wireless customer must negotiate directly concerning all charges produced by the service. Such negotiations will not be an effective means of restraining CPP charges.

The costs and burdens that CPP will impose upon consumers will substantially exceed the minimal incremental benefits of this form of wireless pricing. The Commission has declined to regulate wireless rates and does not propose to do so for CPP services. Additionally, states will not be able to regulate CPP pricing. Instead, the calling party, often a wireline subscriber, would bear the costs of accommodating this pricing arrangement.

Benefits claimed by wireless industry proponents of CPP are also highly speculative at best. Furthermore, the CPP proponents have failed to demonstrate that wireless customers want CPP or that calling customers are willing to pay for calls to wireless phones.

In summary, CPP would create a situation where the choice of service provider would not

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[2] The NPRM cites the example of the U.K. Office of Telecommunications (OFTEL) recently ordering reductions in the amount BT charges its customers for calls to wireless phones and reductions in the amount two wireless carriers, Vodaphone and Cellnet, charge BT to terminate its calls on their wireless networks. Id. at ¶ 54.

be made by the individual upon whom the charges will be imposed. The system as proposed would not encourage price competition to develop for CPP charges. CPP will diminish true competition in the wireless services market because there will be little if any downward pressure on CPP prices where the paying party is not the party making the choice of provider. If not constrained by regulation, charges imposed due to CPP will almost certainly be greater than airtime charges that are billed to the wireless customer.

B. The Wireless Telecommunications Industry In The United States Is Growing At A Tremendous Pace And Is Very Competitive Without Calling Party Pays.

The Joint Consumer Advocates submit that the tremendous growth and success of the wireless industry in the United States is undeniable. The wireless industry does not need CPP to increase the amount of wireless users. Competition in the wireless industry over the past several years has produced dramatic decreases in airtime charges and has fostered the introduction of service packages in which the wireless customer pays little or nothing to receive incoming calls.[3]

The number of wireless subscribers has gone from 91,600 in January of 1985 to 69,209,321 in December, 1998 with annualized revenues going from $482 million to $33 billion during the same time period. Cellular Telecommunications Industry Association's Annualized Wireless Survey Results. The average local monthly bill for wireless subscribers has decreased from $98.02 in December 1988 to $39.43 in December 1998. Id. Monthly service expenses for wireless users have declined on a per subscriber basis going from $17 per month in 1992 to only $7 per month in 1998.

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[3] This is particularly true where wireless customers have flat rate service and are not charged for each minute incrementally as is the case for many wireless customers in Pennsylvania.

David A. Freeman, "Telecommunications Untethered." Bear, Stearns & CO., Inc., August 10, 1999.

A recent study reveals that wireless users see the wireless industry as competitive Peter D. Hart Research Associates, Inc., "Dynamics and Trends in the Wireless Marketplace." Washington, D.C., January, 1999. An overwhelming 90% of users agree with the statement that "there is more competition in the wireless telephone industry today than ever before." Id. Nearly 60% of wireless users say they considered multiple service companies before selecting their current wireless service provider. Id. The number of wireless users who say that they have switched wireless telephone service companies in the past year has held steady at 17% percent. Id.

Wireless industry price decreases, as a result of the success of the wireless industry, have been remarkable. The mobile share of the telecommunications industry continues to rise with mobile services accounting for 14.3 percent of the industry's 1997 revenues, which is an increase over the 1996 figure of 12.2 percent of the industry revenues. "Fourth Report," Annual report and Analysis of the Competitive Market Conditions With Respect to Commercial Mobile Services, FCC 99-136, released June 24, 1999. In the twelve months ending December 1998, mobile telephony generated over $33 billion in revenues and produced a national penetration rate of nearly 26 percent. Id. at 6.

The competition level in the wireless industry is high as there are now at least five mobile telephone operators in each of the 35 largest Basic Trading Areas in the United States and at least three mobile telephone service providers in 97 of the top 100 Basic Trading Areas. Id. According to one study comparing mobile telephone prices in the second quarter of 1998 with the second quarter of 1997, the average price per minute decreased by 18 percent. Id. at 21. The drop in prices does not discriminate between usage levels as price decreases have been occurring for customers with lower levels of monthly usage and it is no longer the high level users who have seen prices drop. Id. at 22. Approximately 230 million people have the ability to choose among at least three mobile telephone service providers. Id. at 62-63.

Implementation of CPP may serve to reverse some of the true competitive nature of the market. Clearly, the potential detriments to CPP are not worth the risk of revising what is an already successful marketplace.

C. Calling Party Pays Would Give an Undue Advantage to Wireless Carriers in Competition with Wireline Providers and May Encourage Pricing Changes by Wireline Carriers within the Local Calling Area.

The wireline carriers in most states, certainly in Pennsylvania and Missouri, offer local service on a flat rate unlimited calling basis. The majority of consumers purchase such a flat rate local service rather than measured usage service. In this manner, consumers incur no additional charges whenever they place a local call to another subscriber within their local calling area.

Joint Consumer Advocates are concerned that, if Calling Party Pays is implemented, this would create a competitive advantage for the wireless carrier whose customers would only be charged for outbound calling. Thus, even if the costs and revenues for each service were the same for wireless and wireline service, the landline carrier would be at a competitive disadvantage if the wireless carrier was given an advantage by the use of Calling Party Pays. We do not believe that the Commission intended to create an inherent regulatory advantage that would apply as a result of the creation of Calling Party Pays for wireless service.

More importantly, this may also encourage wireline carriers to attempt to use the same form of Calling Party Pays for local service. Joint Consumer Advocates are greatly concerned that the use of Calling Party Pays on the part of wireless carriers should not encourage a change in the way in which wireline subscriber to wireline subscriber calls are paid for by most consumers purchasing local service. In this manner, Calling Party Pays may have pricing repercussions in the local market that may not be intended and may adversely affect competition.

D. Calling Party Pays Would Contradict Efforts By The Federal Communications Commission To Force Price Competition By The Paying Party.

The Commission has in the past attempted to foster price competition with the party paying for telecommunications service. For example, the Commission requires payphone service providers to provide a phone number where the calling customer can get additional information regarding rates if the caller desires.[4] This enables the payphone customer to choose amongst the best rates before making the call. CPP, however, does not give the customer any opportunity to shop for the best rates. Therefore, the CPP proposal is at odds with customer choice rulings that the Commission has previously made.

The Commission tentatively concluded that all payphone service providers should be given the right to negotiate with location providers concerning the intraLATA carrier which would be consistent with both the specific language of Section 276 as well as the overall goal of the Telecommunications Act of 1996 in bringing competition into this industry. Id. at ¶ 253, 259. More

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4 See, Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Report and Order, released September 20, 1996, where the Commission sought to advance the twin goals of Section 276 of the Act of "promoting competition among payphone service providers and promoting the widespread deployment of payphone service to the benefit of the general public" as codified in 47 U.S.C. § 276(b)(1).

importantly, however, the Commission also sought to take steps to facilitate use of payphones by consumers. To that end, the Commission required that each payphone clearly indicate the local coin rate within the informational placard on each payphone. Id. at ¶ 6. Pursuant to existing requirements in 47 CFR §64.703, the placard must provide information on the operator service provider presubscribed to the payphone and the address of the Commission to which the consumer may direct complaints regarding operator services. Id.

In the Report and Order, the Commission specifically stated that it is their ultimate goal to have a competitive payphone industry that meets the needs of the public by a wide deployment of payphones. Id. at ¶ 8. The Commission also recognized that, for competitive markets to work properly, it is essential that consumers have full information concerning the choices available to them. Id. at ¶ 11.

The Joint Consumer Advocates submit that the lessons learned in the payphone industry can be applied to the Commissions consideration of CPP. Forced price disclosure was required in the pay phone industry because of the "reverse" competition that had occurred. Rather than the payphone industry competing downward the price of the pay phone call, the pay phone industry had competed upward the fees the payphone provider paid to the owner of the site where the payphone was located. Thus, the payphone provider paid large commissions to the site owner for the right to place the payphone, and recovered these commissions through higher rates charged to the calling party. Competition for building sites drove payphone rates upward which required the Commission to intervene to try to correct this market failure.

The Joint Consumer Advocates submit that CPP may have similar results. Wireless charges to the subscriber may continue to fall but be balanced by high rates charged to the unsuspecting calling party. This will likely also create the confusion for calling parties when telephone numbers in the local calling area carry a substantial charge. This price escalation to levels well above cost is not the type of "competition" that the Commission should promote.

IV. CONCLUSION

The Joint Consumer Advocates request the Federal Communications Commission to review these Comments as it considers what actions to take concerning the Declaratory Ruling and Notice of Proposed Rulemaking in the Matter of Calling Party Pays Service Offering in the Commercial Mobile Radio Services. The Joint Consumer Advocates submit that the Calling Party Pays Service should not be implemented because it will add unwarranted additional charges to the local residential telephone bill, it is anti-competitive, and it is unnecessary as a means of enhancing the development of the wireless telecommunications industry in the United States.

Respectfully submitted,

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Dated: September 17, 1999

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Attachment A

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